

Agricultural Marketing Service, USDA

§ 1150.153

HTS Nos. for dairy import assessment

2105.00.2000
2105.00.3000
2105.00.4000
2106.90.0600
2106.90.0900
2106.90.2400
2106.90.2600
2106.90.2800
2106.90.3400
2106.90.3600
2106.90.3800
2106.90.6400
2106.90.6600
2106.90.6800
2106.90.7200
2106.90.7400
2106.90.7600
2106.90.7800
2106.90.8000
2106.90.8200
2202.90.1000
2202.90.2400
2202.90.2800
3501.10.1000
3501.10.5000
3501.90.6000
3502.20.0000

(2) The assessment on imported dairy products shall be paid by the importer to CBP at the time of entry summary for any products identified in §1150.152(b)(1).

(3) The assessments collected by CBP pursuant to §1150.152(b)(2) of this section shall be transferred to the Board in compliance with an agreement between CBP and the Secretary.

(4) The Secretary, at his or her discretion, shall verify the information reported by importers to CBP to determine if additional money is due the Board or an amount is due to an importer based on the quantity imported and the milk solids content per unit. In the case of money due to an importer from the Board, the Board will issue payment promptly to the importer. In the case of money due from the importer to the Board, the Secretary will send an invoice for payment directly to the importer. The remittance will be due to the Secretary upon receipt of the invoice. The Secretary will

promptly forward such payments received to the Board.

(5) If an importer elects to have funds remitted to a qualified program(s), the importer shall inform the Secretary of such designation by sending a letter to an address provided by the Secretary. Importer remittances for qualified program(s) shall not exceed 2.5 cents per hundredweight of milk, or equivalent thereof, of the 7.5 cents per hundredweight of milk, or equivalent thereof, paid by the importer pursuant to §1150.152(b)(1). The Secretary shall compute the funds due for each qualified program designated by importers and direct the Board to forward such funds to each qualified program.

(6) Assessments collected on imported dairy products shall not be used for foreign market promotion of United States dairy products.

(7) Any money received by the Board pursuant to §1150.152(b)(1) before the Secretary appoints the initial importer representatives to the Board shall not be spent by the Board but shall be held in escrow until such appointment.

(8) The collection of assessments pursuant to §1150.152(a) and (b) shall continue until terminated by the Secretary.

[76 FR 14789, Mar. 18, 2011]

§ 1150.153 Qualified dairy product promotion, research or nutrition education programs.

(a) Any producer organization that conducts a State or regional dairy product promotion, research or nutrition education program, authorized by Federal or State law; or has been an active and ongoing producer program before enactment of the Act; or is an importer organization that conducts a promotion, research, or nutrition education program may apply to the Secretary for certification of qualification so that:

(1) Producers may receive credit pursuant to §1150.152(a)(3) for contributions to such program; and

(2) The Board may remit payments designated by importers pursuant to §1150.152(b)(5).

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Conduct activities as defined in §§1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;

(2) Except for producer programs operated under the laws of the United States or any State, and except for importer programs, have been active and ongoing before enactment of the Act;

(3) For producer organizations, be financed primarily by producers, either individually or through cooperative associations, or for importer organizations, be financed primarily by importers;

(4) Not use a private brand or trade name in its advertising and promotion of dairy products unless the Board recommends and the Secretary concurs that such preclusion should not apply;

(5) Certify to the Secretary that any requests from producers or importers for refunds under the program will be honored by forwarding to either the Board or a qualified program designated by the producer or importer that portion of such refunds equal to the amount that otherwise would be applicable to that program pursuant to §1150.152(a)(3) or (b)(5); and

(6) Not use program funds for the purpose of influencing governmental policy or action.

(c) An application for certification of qualifications of any dairy product promotion, research or nutrition education program which does not satisfy the requirements specified in paragraph (b) of this section shall be denied. The certification of any qualified program which fails to satisfy the requirements specified in paragraph (b) of this section after certification shall be subject to suspension or termination.

(1) Prior to the denial of an application for certification of qualification, or the suspension or termination of an existing certification, the Director of the Dairy Division shall afford the applicant or the holder of an existing certification an opportunity to achieve compliance with the requirements for certification within a reasonable time, as determined by the Director.

(2) Any dairy product promotion, research or nutrition education program whose application for certification of qualification is to be denied, or whose

certification of qualification is to be suspended or terminated shall be given written notice of such pending action and shall be afforded an opportunity to petition the Secretary for a review of the action. The petition shall be in writing and shall state the facts relevant to the matter for which the review is sought, and whether petitioner desires an informal hearing. If an informal hearing is not requested, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action. If petitioner requests a hearing, the Director of the Dairy Division, or a person designated by the Director, shall hold an informal hearing in the following manner:

(i) Notice of a hearing shall be given in writing and shall be mailed to the last known address of the petitioner or of the program, or to an officer thereof, at least 20 days before the date set for the hearing. Such notice shall contain the time and place of the hearing and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented. The hearing place shall be as convenient to the State or regional program as can reasonably be arranged.

(ii) Hearings are not to be public and are to be attended only by representatives of the petitioner or the program and of the U.S. Government, and such other parties as either the program or the U.S. Government desires to have appear for purposes of submitting information or as counsel.

(iii) The Director of the Dairy Division, or a person designated by the Director, shall be the presiding officer at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the petitioner or the program, or other participating parties, within the time specified by the presiding officer.

(iv) The presiding officer shall prepare preliminary findings setting forth a recommendation as to what action should be taken and the basis for such action. A copy of such findings shall be

served upon the petitioner or the program by mail or in person. Written exceptions to the findings may be filed within 10 days after service thereof.

(v) After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action.

[49 FR 11816, Mar. 28, 1984, as amended at 56 FR 8258, Feb. 28, 1991; 76 FR 14791, Mar. 18, 2011]

§ 1150.154 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1150.155 Adjustment of accounts.

(a) Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board in accordance with 1150.152(a), such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in §1150.152(a). Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

(b) Any importer of dairy products against whose imports an assessment has been collected under §1150.152(b) who believes that such assessment or any portion of such assessment was made on milk solids of U.S. origin or milk solids other than cow's milk may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment for milk solids from milk produced from the U.S. or milk solids other than cow's milk solids. The Secretary will instruct the Board to send such reimbursement to the importer.

[76 FR 14791, Mar. 18, 2011]

§ 1150.156 Charges and penalties.

(a) *Late-payment charge.* Any unpaid assessments due to the Board pursuant to §1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(1) For the purpose of this section, any assessment pursuant to §1150.152(a) that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(2) For the purpose of this section, any assessment not collected by CBP at the time entry summary documents are filed by the importer is considered to be past due. If CBP does not collect an assessment from an importer, the importer shall be responsible for paying the assessment and any late charges to the Secretary in the form of a negotiable instrument made payable to "USDA." The payment shall be mailed to a location designated by the Secretary or sent in an electronic form approved by the Secretary.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than the amount specified in §3.91(b)(1)(xx) of this title for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of,